

APPENDIX III      EXISTING VERSION OF RSA 162-H

1.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:1 Declaration of Purpose

The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; that the state insure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion; and that existing laws do not provide adequate public review and control over the construction and operation of energy facilities. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. The legislature also recognizes that it has a broad responsibility to provide both economic and environmental protection for its coastal and estuarine waters and the adjoining land areas. The legislature therefore declares it to be its policy that any offshore facility other than pipelines shall be located so as to at least comply with the policies and guidelines of the Federal Environmental Protection Agency; and that this policy may be relaxed only if it is shown by clear and convincing evidence that there are compelling technological or economic reasons for doing so, that no feasible alternative exists, and that there will be no substantial environmental risk.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

2.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:2 Definitions

I. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environmental of the site of the proposed energy facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for the temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

II. "Committee" means the energy facility evaluation committee established by this chapter.

III. "Energy" means power derived from a natural resource, including, but not limited to, oil, coal, and gas.

IV. "Energy facility" means any industrial structure, other than bulk power supply facilities as defined in RSA 162-F:2, that may be used substantially to extract, manufacture, or refine sources of energy, and means also such ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure; without limiting the generality of the foregoing, such industrial structures include oil refineries, plants for processing liquefied natural gas, and plants for coal conversion; further without limiting the generality of the foregoing, such ancillary facilities include onshore and offshore loading and unloading facilities, pipelines, and storage tanks.

V. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**3.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:3 Energy Facility Evaluation Committee

The energy facility evaluation committee shall consist of the members of the bulk power supply facility site evaluation committee established by RSA 162-F:3. Notwithstanding any other agency authority to the contrary, no member may delegate a voting right to others.

**SOURCE**

1974, 39:3. 1985, 62:3, eff. June 28, 1985.

**4.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:4 State Permits

I. No person may commence construction of an energy facility in this state or operate such a facility without a permit from the energy facility evaluation committee. Such a permit may not be transferred or assigned without the approval of the committee.

II. The committee shall incorporate in any permit issued hereunder such terms and conditions as may be specified to the committee by any of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any permit hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency. Notwithstanding any other provision of law, the application required by RSA 162-H:6 shall be in lieu of all applications otherwise requirable by any of

such other state agencies. Further notwithstanding any other provision of law, the hearing conducted under RSA 162-H:8 shall be a joint hearing with such other state agencies and shall be in lieu of all hearings otherwise requirable by any of such other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of such other state agencies so to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter. Subject to RSA 162-H:6, III, but notwithstanding any other provision of law, each of such other state agencies shall make and submit to the committee a final decision on such parts of the application as relate to its jurisdiction not later than 7 months after it has received a copy of such parts in accordance with RSA 162-H:6, I. Notwithstanding any other provision of this section or this chapter, each of such other state agencies shall retain all of its powers and duties of enforcement.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**5.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:5 Powers of the Committee

I. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

II. The committee shall have the authority and responsibility for:

(a) The issuance of any permit hereunder;

(b) The determination of the terms and conditions of any permit issued hereunder, subject to RSA 162-H:4;

(c) The monitoring of the construction and operation of any energy facility granted a permit hereunder; and

(d) The enforcement of the terms and conditions of any permit issued hereunder.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a permit hereunder to such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:4, it may not delegate the authority to hold hearings, issue permits, determine the terms and conditions of a permit, or enforce a permit. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the permit. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the permit-holder as are relevant to the terms or conditions of the permit.

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may exempt the applicant from the approval and permit provisions of this chapter. The committee shall adopt rules under RSA 541-A specifying the criteria under which an exemption may be granted. [Added 1985, 62:4, eff. June 28, 1985.]

SOURCE

1974, 39:3, eff. April 5, 1974.

6.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:6 Application for Permit

I. Each application hereunder shall contain sufficient information to satisfy the application requirements of each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility. Upon receipt of an application, the committee shall immediately make copies thereof, the cost of which making shall be borne by the applicant, and shall immediately forward to each of such other state agencies a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review thereof to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of such other state agencies, that agency shall, in writing, immediately notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by RSA 162-H:10 on the committee and by RSA 162-H:4 on such other state agencies, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information for any of such other state agencies in accordance with this paragraph.

II. An application hereunder shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility;

(b) Identify both the first choice and any other choice for the site of each major part of the proposed facility;

(c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment of each site proposed, whether as first choice or as any other choice, for such part;

(d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems;

(e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility;

(f) Provide such additional information as the committee may require to carry out the purposes of this chapter.

Upon receipt of such an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information in accordance with this paragraph. If the application does not contain such sufficient information, the committee shall, in writing, immediately notify the applicant of that fact and specify what information the applicant must supply. Notwithstanding any other provision of law, for purposes of the time limitations imposed by RSA 162-H:10 on the committee and by RSA 162-H:4 on other state agencies, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information in accordance with this paragraph.

III. An application hereunder, in any of its aspects, may be reasonably modified before and during the period of hearings with the consent of the committee; provided, however, if any of such other state agencies as have jurisdiction, under state or federal law, to regulate the subject matter of such modification has already made a decision in accordance with RSA 162H:4, it may alter such decision in reasonable response to such modification; provided further, however, if to allow reasonable inquiry into such modification, the committee or any of such other state agencies needs time in addition to that provided for it by this chapter, it may take as much additional time as is necessary, but no more additional time than is necessary, to allow such reasonable inquiry.

IV. The committee shall adopt rules under RSA 541-A establishing a fee schedule for the processing of applications hereunder. The fees required by this paragraph shall be paid at the time said application is filed and shall be deposited with the state treasurer as restricted revenue for the use of the committee in the processing of applications as provided for in RSA 162-H:8, III. [Added 1985, 62:5, eff. June 28, 1985.]

#### SOURCE

1974, 39:3, eff. April 5, 1974.

#### 7.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:7 Disclosure of Ownership

I. Any application for a permit shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

(a) Full name and address of the person, association or corporation;

(b) If an association, the names and residences of the members of the association;

(c) If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders;

(d) The location or locations where an applicant is to conduct its business;

(e) A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

II. Within 4 months after the close of each fiscal year of the applicant, it shall file with the committee a statement either that there has been no substantial change in any of the information in the application or a description of any such changes as have occurred.

#### SOURCE

1974, 39:3, eff. April 5, 1974.

#### 8.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:8 Public Hearing; Rules

I. Within 60 days after receipt of an application under RSA 162-H:6, the committee shall commence a public hearing on such application. The committee shall determine which part of the proposed facility is the principal part and shall conduct the first session of such public hearing in the county in which the principal part is proposed to be located. Not less than 21 days before such first session, the committee shall give public notice of the hearing and, within such notice, shall describe the proposed facility and the proposed sites for each major part of the facility. The committee shall publish the notice in each newspaper having a general circulation in the affected area. The first session of the hearing shall be for public information on the proposed facility. The applicant shall present information to the committee and the public, but only committee members shall be permitted to ask questions of the applicant. Subsequent sessions of the hearing shall be in the nature of adversary proceedings, and may be held either in such county or in Concord, New Hampshire, as determined by the committee. The committee shall give adequate public notice of the time and place of each subsequent session. The committee shall consider and weigh all evidence presented at each session of the public hearing and any other material ancillary to the siting application. [Amended 1985, 62:6, eff. June 28, 1985.]

II. The committee shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

III. The committee may require such information from the applicant and state agencies and officials as it deems necessary to assist it in the conduct of hearings and in making any investigation or studies it may undertake and in the determination of the terms and conditions of any permit under consideration. The committee shall conduct such reasonable studies and

investigations as it deems necessary or appropriate to carry out the purposes of this chapter and may employ consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee. The committee and counsel for the public, as provided for by RSA 162-H:11, are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter. [Amended 1982, 42:120. 1983, 71:11, eff. July 19, 1983.]

IV. The committee shall issue rules and regulations as may from time to time be required to carry out the provisions of this chapter.

SOURCE

1974, 39:3, eff. April 5, 1974.

9.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:9 Findings

I. In order for the committee to issue a permit hereunder consistent with the provisions of RSA 162-H:1, it must find the following:

(a) the proposed site and facility will not unduly interfere with the orderly development of the region and will not have an unreasonably adverse impact on aesthetics, historic sites, coastal and estuarine waters, air and water quality, the natural environment and the public health and safety; and

(b) the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the permit.

II. Findings by the committee shall be based on the record and shall be made by a majority vote of a full committee, whether or not the full committee is present for voting.

III. In the consideration of applications for permits, the committee shall fully review and consider all environmental values and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the permit. The committee may consult with interested regional agencies and agencies of border states in the issuance of such permits.

SOURCE

1974, 39:3, eff. April 5, 1974.

10.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:10 Permit Deadline

Subject to RSA 162-H:6, III, a permit shall be either issued or denied by the committee within 14 months of the date of its receipt of the application and



may contain such reasonable terms and conditions as it deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such determinations, when made, shall be final and in writing and subject only to the provisions of this chapter.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**11.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:11 Counsel for the Public

I. After the committee has received an application, in accordance with RSA 162-H:6, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in a formal action.

II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**12.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:12 Judicial Review

Decisions made pursuant to this chapter by the energy facility evaluation committee or by any other state agency shall be reviewable in accordance with RSA 541.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**13.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:13 Enforcement

I. Whenever the committee determines that any term or condition of any permit issued hereunder is being violated, it shall, in writing, notify the person holding such permit of the specific violation and order such person immediately to terminate such violation. If, 15 days after receipt of such order, such person has failed or neglected to terminate such violation, the committee may suspend such person's permit; provided, however, except for

emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

II. The committee may suspend a persons's permit if the committee determines that such person has made a material misrepresentation in its application or in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that such person has violated the provisions of this chapter or regulations issued hereunder; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

III. The committee may revoke any permit that is suspended hereunder after the person holding such suspended permit has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided opportunity for a full hearing thereon.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**14.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:14 Penalties

I. The superior court in term time or in vacation may enjoin any act in violation this chapter.

II. Any construction or operation of energy facilities in violation of this chapter, or in material violation of the terms of a permit issued hereunder, may result in an assessment by the superior court of civil damages not to exceed \$10,000 for each day of such violation.

III. Whoever commits any wilful violation of any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**SOURCE**

1974, 39:3, eff. April 5, 1974.

**15.**

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:15 Separability

If any provision or clause of this chapter, or application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable. Each section of this chapter shall be separable from all other sections hereof and the nullification of any

section of this chapter shall have no effect upon the remaining sections of this chapter.

SOURCE

1974, 39:3, eff. April 5, 1974.

16.

Chapter	Public Safety and Welfare - Energy Facility Evaluation, Siting, Construction and Operations
Subdivision	There is none for this article
Section	162-H:16 Records

Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings and correspondence of the committee shall be maintained, all of which records shall be open to public inspection as provided for under RSA 91-A.

SOURCE

1974, 39:3, eff. April 5, 1974.